

Case Nos. 12-17668, 12-16995, and 12-16998

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEVERLY SEVCIK, et al., *Plaintiffs-Appellants*,

v.

BRIAN SANDOVAL, et al., *Defendants-Appellees*, and

COALITION FOR THE PROTECTION OF MARRIAGE, *Intervenor-Defendant-Appellee*.

On Appeal from the United States District Court for the District of Nevada
Case No. 2:12-CV-00578-RCJ-PAL (Honorable Robert C. Jones)

NATASHA N. JACKSON, et al., *Plaintiffs-Appellants*,

v.

NEIL S. ABERCROMBIE, Governor, State of Hawai'i, *Defendant-Appellant*,

LORETTA J. FUDDY, Director, Department of Health, State of Hawai'i,
Defendant-Appellee, and

HAWAII FAMILY FORUM, *Intervenor-Defendant-Appellee*.

On Appeal from the United States District Court for the District of Hawaii
Case No. 1:11-cv-00734-ACK-KSC (Honorable Alan C. Kay, Sr.)

**Brief of the American Psychological Association, National Association of
Social Workers, American Association for Marriage and Family Therapy,
American Psychoanalytic Association, and Hawaii Psychological Association
as Amici Curiae in Support of Plaintiff-Appellants**

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IDENTITY AND INTEREST OF AMICI CURIAE

The American Psychological Association (“APA”) is a scientific and educational organization dedicated to increasing and disseminating psychological knowledge; it is the world’s largest professional association of psychologists. The APA has adopted multiple research-based policy statements supporting the rights of gay and lesbian people, including a 2011 policy statement supporting full marriage equality and recognizing that according gay and lesbian people only a “civil union” status “perpetuates the stigma historically attached to homosexuality, and reinforces prejudice against lesbian, gay, and bisexual people.”¹

The National Association of Social Workers (“NASW”) was established in 1955 and is the largest association of professional social workers in the world with 135,000 members and 55 chapters. NASW develops policy statements on issues of importance to the social work profession and enforces the *NASW Code of Ethics*, and, consistent with those standards, NASW supports full social and legal acceptance of lesbian, gay, and bisexual people.

The American Association for Marriage and Family Therapy (“AAMFT”), founded in 1942, is a national professional association representing the field of marriage and family therapy and the professional interests of over 50,000 marriage and family therapists in the United States. AAMFT joins this brief for

¹ Am. Psychol. Ass’n, *Resolution on Marriage Equality For Same-Sex Couples* (2011), available at <http://www.apa.org/about/policy/same-sex.pdf>.

the reasons expressed in its 2005 *Position on Couples and Families*, available at http://www.aamft.org/imis15/content/about_aamft/position_on_couples.aspx.

The American Psychoanalytic Association is the oldest and largest national psychoanalytic membership organization, with more than 3,500 members and associates. It believes that marriage is a basic human right and that same gender couples should be able to share equally in the rights and responsibilities of civil marriage.

Hawai'i Psychological Association is a professional association representing over 300 Hawai'i psychologists. It seeks to advance the science and practice of psychology while supporting excellence in education, training, research, advocacy and service.

All parties have consented to the filing of this brief.

ARGUMENT

I. The Scientific Evidence Presented in This Brief.

This brief presents an accurate and balanced summary of the current state of scientific and professional knowledge concerning sexual orientation and families relevant to this case.

Amici rely on the best empirical research available. Before citing a study, *Amici* have critically evaluated its methodology, including the reliability and

validity of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses.

Scientific research is a cumulative process, and no empirical study is perfect in its design and execution. Many studies cited herein discuss their own limitations and provide suggestions for further research. This is consistent with the scientific method and does not impeach the overall conclusions. Even well-executed studies may be limited in their implications and the generalizability of their findings, and greater confidence can be placed in findings that have been replicated by multiple studies. Accordingly, *Amici* base their conclusions as much as possible on general patterns rather than any single study.

Most of the studies and literature reviews cited herein have been peer-reviewed and published in reputable academic journals. Other academic books, book chapters, and technical reports, which typically are not subject to the same peer-review standards as journal articles, are included when they report research employing rigorous methods, are authored by well-established researchers, and accurately reflect professional consensus about the current state of knowledge. *Amici* have made a good faith effort to include all relevant studies and have not excluded any study because of its findings.

II. Homosexuality Is a Normal Expression of Human Sexuality, Is Generally Not Chosen, and Is Highly Resistant to Change.

Sexual orientation refers to an enduring disposition to experience sexual, affectional, and/or romantic attractions to one or both sexes. It encompasses an individual's sense of personal and social identity based on those attractions, on behaviors expressing those attractions, and on membership in a community of others who share those attractions and behaviors.² Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both sexes).

Although homosexuality was classified as a mental disorder when the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, only five years later a study sponsored by the National Institute of Mental Health found no evidence to support the

² See A.R. D'Augelli, *Sexual Orientation*, in 7 Am. Psychol. Ass'n, *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); G.M. Herek, *Homosexuality*, in 2 Corsini *Encyclopedia of Psychology* 774-76 (I.B. Weiner & W.E. Craighead eds., 4th ed. 2010); Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People* (2011).

classification.³ On the basis of that study and others demonstrating that the original classification reflected social stigma rather than science,⁴ the American Psychiatric Association declassified homosexuality as a mental disorder in 1973. In 1974, the APA adopted a policy reflecting the same conclusion. For decades, then, the consensus of mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality; that they pose no inherent obstacle to leading a happy, healthy, and productive life; and that gay and lesbian people function well in the full array of social institutions and interpersonal relationships.⁵

Most gay men and lesbians do not experience their sexual orientation as resulting from a voluntary choice. In a U.S. national probability (i.e., “representative”) sample of 662 self-identified lesbian, gay, and bisexual adults, 88% of gay men and 68% of lesbians reported feeling they had no choice at all about their sexual orientation, while another 7% of gay men and 15% of lesbians

³ E. Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. Projective Techniques 17 (1957).

⁴ B.F. Riess, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* 296 (J. Marmor ed., 1980); C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).

⁵ See, e.g., Am. Psychiatric Ass’n, Position Statement: *Homosexuality and Civil Rights* (1973), in 131 Am. J. Psychiatry 497 (1974); Am. Psychol. Ass’n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

reported only a small amount of choice. Only 5% of gay men and 16% of lesbians felt they had a fair amount or a great deal of choice.⁶

Although some groups and individuals have offered clinical interventions that purport to change sexual orientation from homosexual to heterosexual—sometimes called “conversion” therapies—these interventions have not been shown to be effective or safe. A review of the scientific literature by an APA task force concluded that sexual orientation change efforts are unlikely to succeed and indeed can be harmful.⁷

All major national mental health organizations—including *Amici*—have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation.⁸

⁶ G. Herek et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a US Probability Sample*, 7 Sexuality Res. & Soc. Policy 176 (2010); see also G. Herek et al., *Internalized Stigma Among Sexual Minority Adults*, 56 J. Counseling Psychol. 32 (2009).

⁷ Am. Psychol. Ass’n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009); see also Am. Psychol. Ass’n, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009), both available at <http://www.apa.org/pi/lgbt/resources/sexual-orientation.aspx>.

⁸ See Am. Psychol. Ass’n, *Resolution*, *supra* note 1; Am. Psychiatric Ass’n, *Position Statement: Psychiatric Treatment and Sexual Orientation* (1998), available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/199820.aspx>; Am. Ass’n for Marriage & Fam. Therapy, *Reparative/Conversion Therapy* (2009), available at http://www.aamft.org/iMIS15/AAMFT/MFT_Resources/Content/Resources/Position_On_Couples.aspx; Am. Med. Ass’n, Policy H-160.991, *Health Care Needs of the Homosexual Population*, available at [6](http://www.ama-</p></div><div data-bbox=)

III. Sexual Orientation and Relationships.

Sexual orientation is commonly discussed as a characteristic of the *individual*, like biological sex or age. This perspective is incomplete because sexual orientation necessarily involves relationships with other people. Sexual acts and romantic attractions are categorized as homosexual or heterosexual according to the biological sex of the individuals involved in them, relative to each other. Indeed, it is only by acting with another person—or desiring to act—that individuals express their heterosexuality, homosexuality, or bisexuality. Thus, sexual orientation is integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment, and intimacy. Sexual orientation defines the universe of persons with whom one is likely to find the satisfying and fulfilling relationships that, for many individuals, comprise an essential component of personal identity.

assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page; Nat'l Ass'n of Soc. Workers, Position Statement: "*Reparative*" and "*Conversion*" Therapies for Lesbians and Gay Men (2000), available at <http://www.naswdc.org/diversity/lgb/reparative.asp>; Am. Psychoanalytic Ass'n, Position Statement: *Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), available at http://www.apsa.org/_apsaa/position_statements/attempts__change_sexual_orientation.aspx; B.L. Frankowski, *Sexual Orientation and Adolescents*, 113 Pediatrics 1827 (2004).

A. Gay Men and Lesbians Form Stable, Committed Relationships That Are Equivalent to Heterosexual Relationships in Essential Respects.

Most gay men and lesbians want to form stable, long-lasting relationships,⁹ and many of them do: numerous studies using nonprobability samples of gay men and lesbians have found that the vast majority of participants have been in a committed relationship at some point in their lives, that large proportions are currently in such a relationship (40-70% of gay men and 45-80% of lesbians), and that many of those couples have been together 10 or more years.¹⁰ Survey data from probability samples support these findings.¹¹ 2010 Census data show that same-sex couples headed more than 600,000 U.S. households.¹²

⁹ In a national probability sample of 662 self-identified lesbian, gay, and bisexual adults, of those who were currently in a relationship, 78% of gay men and 87% of lesbians said they would marry their partner if it was legal, and, of those not currently in a relationship, 34% of gay men and 46% of lesbians said that they would like to marry someday. Herek et al., *Demographic*, *supra* note 6; see also Henry J. Kaiser Fam. Found., *Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* 31 (2001), available at <http://www.kff.org/kaiserpolls/3193-index.cfm>; A.R. D'Augelli et al., *Lesbian and Gay Youth's Aspirations for Marriage and Raising Children*, 1 J. LGBT Issues in Counseling, no. 4, 77 (2007).

¹⁰ See L.A. Peplau & A.W. Fingerhut, *Same-sex Romantic Relationships*, in *Handbook of Psychology and Sexual Orientation* 165-178 (C.J. Patterson & A.R. D'Augelli eds. 2013); L.A. Peplau & A.W. Fingerhut, *The Close Relationships of Lesbians and Gay Men*, 58 Ann. Rev. Psychol. 405 (2007); L.A. Peplau & N. Ghavami, *Gay, Lesbian, and Bisexual Relationships*, in *Encyclopedia of Human Relationships* (H.T. Reis & S. Sprecher eds., 2009).

¹¹ Herek et al., *Demographic*, *supra* note 6; T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in*

Empirical research demonstrates that the psychological and social aspects of committed relationships between same-sex partners largely resemble those of heterosexual partnerships. Similarly to heterosexual couples, same-sex couples form deep emotional attachments and commitments. They go through similar processes to address concerns about intimacy, love, equity, and similar relationship issues.¹³ Empirical research also shows that same-sex couples have levels of relationship satisfaction similar to or higher than those of heterosexual couples.¹⁴

“*Gay Ghettos*” with *Those Living Elsewhere*, 91 Am. J. Pub. Health 980, 982 (Table 1) (2001); S.D. Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 J. Consulting & Clinical Psychol. 53, 56 (2003); Henry J. Kaiser Fam. Found., *supra* note 9.

¹² 2010 Census and 2010 American Community Survey, Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children, *available at* <http://www.census.gov/hhes/samesex/files/supp-table-AFF.xls>.

¹³ L.A. Kurdek, *Change in Relationship Quality for Partners from Lesbian, Gay Male, and Heterosexual Couples*, 22 J. Fam. Psychol. 701 (2008); L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004); G.I. Roisman et al., *Adult Romantic Relationships as Contexts for Human Development: A Multimethod Comparison of Same-Sex Couples with Opposite-Sex Dating, Engaged, and Married Dyads*, 44 Developmental Psychol. 91 (2008); *see generally* L.A. Kurdek, *What Do We Know About Gay and Lesbian Couples?*, 14 Current Directions in Psychol. Sci. 251 (2005); Peplau & Fingerhut (2007), *supra* note 10; Peplau & Ghavami, *supra* note 10.

¹⁴ K.F. Balsam et al., *Three-Year Follow-Up of Same-Sex Couples Who Had Civil Unions in Vermont, Same-Sex Couples Not in Civil Unions, and Heterosexual Married Couples*, 44 Developmental Psychol. 102 (2008); Kurdek, *Change in Relationship Quality*, *supra* note 13; L.A. Peplau & K.P. Beals, *The Family Lives of Lesbians and Gay Men*, in *Handbook of Family Communication* 233, 236 (A.L. Vangelisti ed., 2004).

B. The Institution of Marriage Offers Social, Psychological, and Health Benefits That Are Denied to Same-Sex Couples.

Marriage as a social institution has a profound effect on the lives of the individuals who inhabit it. Sociologists have observed that marriage creates order in peoples' lives¹⁵ and "provides a strong positive sense of identity, self-worth, and mastery."¹⁶ Empirical research demonstrates that marriage has distinct benefits that extend beyond the material necessities of life.¹⁷ These intangible elements of marital relationships have important implications for the physical and psychological health of married individuals and for the relationship itself.

Because marriage rights have been granted to same-sex couples only recently and only in a few jurisdictions, little empirical research comparing married same-sex couples to unmarried same-sex couples, or those in civil unions has been published.¹⁸ Based on their scientific and clinical expertise, *Amici* believe

¹⁵ P. Berger & H. Kellner, *Marriage and the Construction of Reality: An Exercise In the Microsociology of Knowledge*, 46 *Diogenes* 1 (1964).

¹⁶ W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 *J. Fam. Issues* 4, 16 (1990). See also E. Durkheim, *Suicide: A Study in Sociology* 259 (J.A. Spaulding & G. Simpson trans., Glencoe, Ill.: Free Press 1951) (original work published 1897).

¹⁷ See S. Stack & J.R. Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 *J. Marriage & Fam.* 527 (1998); R.P.D. Burton, *Global Integrative Meaning as a Mediating Factor In the Relationship Between Social Roles and Psychological Distress*, 39 *J. Health & Soc. Behav.* 201 (1998); S.L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 *J. Fam. Issues* 53, 53 (1995); Gove, *supra* note 16, at 5.

¹⁸ One recent study compared the psychological well-being of gay, lesbian, and bisexual Californians who were legally married to those who were in registered

it is appropriate to extrapolate from the empirical research literature for heterosexual couples—with qualifications as necessary—to anticipate the likely effects of marriage for same-sex couples.¹⁹

Married men and women generally experience better physical and mental health than their unmarried counterparts.²⁰ These health benefits do not appear to

domestic partnerships and those who were not in same-sex legal relationships. R.G. Wight, A.J. LeBlanc, & M.V.L. Badgett, *Same-Sex Legal Marriage and Psychological Well-Being: Findings from the California Health Interview Survey*, Am. J. of Pub. Health 103(2), 339-346 (2013). This study found that Californians who were legally married to a same-sex partner had significantly less psychological distress than lesbian, gay, and bisexual persons not in a same-sex legal relationship; levels of distress did not differ significantly between those in a registered domestic partnership (RDP) and those not in a legal relationship. Although the difference in psychological well-being between respondents in RDPs and those who were married to a same-sex partner was not statistically significant, supplemental analyses showed that marriage was significantly associated with psychological well-being among married couples but domestic partnership was not. The authors concluded, “it appears there might be a unique positive mental health association specifically conferred by legal marriage, particularly compared with not being in any type of legally recognized relationship at all.” *Id.* at 343.

¹⁹Researchers recognize that comparisons between married and unmarried heterosexual couples are complicated by the possibility that observed differences might be due to self-selection. After extensive study, however, researchers have concluded that benefits associated with marriage result largely from the institution itself rather than self-selection. See, e.g., Gove, *supra* note 16 at 10; J.E. Murray, *Marital Protection and Marital Selection: Evidence from a Historical-Pro prospective Sample of American Men*, 37 Demography 511 (2000). It is reasonable to expect that same-sex couples who choose to marry, like their heterosexual counterparts, will benefit from the institution of marriage itself.

²⁰ See N.J. Johnson et al., *Marital Status and Mortality: The National Longitudinal Mortality Study*, 10 Annals Epidemiology 224 (2000); C.E. Ross et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage & Fam. 1059 (1990); R.W. Simon, *Revisiting the Relationships Among Gender, Marital Status, and Mental Health*, 107 Am. J. Soc. 1065 (2002).

result simply from being in an intimate relationship, for most studies have found that married heterosexual individuals generally manifest greater well-being than those of comparable cohabiting couples.²¹ Of course, marital status alone does not guarantee greater health or happiness. Unhappily married people often manifest lower levels of well-being than the unmarried, and marital discord and dissatisfaction is often associated with negative health effects.²² Nevertheless, satisfied married couples consistently manifest higher levels of happiness, psychological well-being, and physical health than the unmarried.

Being married is also a source of stability and commitment. Marital commitment is a function not only of rewarding features of the relationship, but also of external constraints on dissolving the relationship. Barriers to terminating a marriage include feelings of obligation to one's family members; moral and religious values; legal restrictions; financial concerns; and the anticipated

²¹ See Gove *supra* note 16; S.L. Brown, *The Effect of Union Type on Psychological Well-Being: Depression Among Cohabitors Versus Marrieds*, 41 J. Health & Soc. Behav. 241 (2000). But see C.E. Ross, *Reconceptualizing Marital Status as a Continuum of Social Attachment*, 57 J. Marriage & Fam. 129 (1995) (failing to detect significant differences in depression between married and comparable cohabiting heterosexual couples).

²² See W.R. Gove et al., *Does Marriage Have Positive Effects on the Psychological Well-Being of the Individual?*, 24 J. Health & Soc. Behav. 122 (1983); K. Williams, *Has the Future of Marriage Arrived? A Contemporary Examination of Gender, Marriage, and Psychological Well-Being*, 44 J. Health Soc. Behav. 470 (2003); J.K. Kiecolt-Glaser & T.L. Newton, *Marriage and Health: His and Hers*, 127 Psychol. Bull. 472 (2001).

disapproval of others.²³ Perceiving one's intimate relationship primarily in terms of rewards, rather than barriers to dissolution, is likely to be associated with greater relationship satisfaction.²⁴ And, the existence of barriers alone is not sufficient to sustain a marriage in the long term. Nonetheless, perceived barriers are negatively correlated with divorce; thus, the presence of barriers to dissolution of the relationship that marriage creates may increase partners' motivation to seek solutions for problems, rather than to dissolve the relationship.²⁵

For same-sex couples lacking access to legal marriage, the primary motivation to remain together derives from the rewards associated with the relationship rather than formal barriers to separation.²⁶ Given this fact, and the legal and prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.

²³ See G. Levinger, *Marital Cohesiveness and Dissolution: An Integrative Review*, 27 J. Marriage & Fam. 19 (1965); J.M. Adams & W.H. Jones, *The Conceptualization of Marital Commitment: An Integrative Analysis*, 72 J. Personality & Soc. Psychol. 1177 (1997).

²⁴ See, e.g., D. Previti & P.R. Amato, *Why Stay Married? Rewards, Barriers, and Marital Stability*, 65 J. Marriage & Fam. 561 (2003).

²⁵ See T.B. Heaton & S.L. Albrecht, *Stable Unhappy Marriages*, 53 J. Marriage & Fam. 747 (1991); L.K. White & A. Booth, *Divorce Over the Life Course: The Role of Marital Happiness*, 12 J. Fam. Issues 5 (1991).

²⁶ L.A. Kurdek, *Relationship Outcomes and Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting, and Lesbian Cohabiting Couples*, 60 J. Marriage & Fam. 553 (1998).

IV. The Children of Same Sex Couples.

A. Many Same-Sex Couples Raise Children.

Census data under-estimate the total number of same-sex couples who are parents.²⁷ In 2010, the Census reported 111,033 households headed by same-sex partners with their own children under 18 years; and, 2,713 of these households were in Hawaii and Nevada.²⁸

B. The Factors That Affect the Adjustment of Children Are Not Dependent on Parental Gender or Sexual Orientation.

Hundreds of studies over the past 30 years have elucidated the factors that are associated with healthy adjustment among children and adolescents—*i.e.*, the influences that allow children and adolescents to function well in their daily lives.²⁹ The three most important are (1) the qualities of parent-child relationships, (2) the qualities of relationships among significant adults (*e.g.*, parents) in children's or adolescents' lives, and (3) available economic and other resources. As one noted authority in developmental psychology explained:

²⁷ This is because the Census does not directly assess participants' sexual orientation; Census data reflect only households headed by co-habiting same-sex partners who reported their relationship status. 2010 Census Survey, *supra* note 12

²⁸ 2010 Census Survey, *supra* note 12.

²⁹ S. Golombok, *Parenting: What Really Counts?* (2002); M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development*, in *Developmental Science: An Advanced Textbook* 429-68 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); C.J. Patterson, & P.D. Hastings, *Socialization in the Context of Family Diversity*, in *Handbook of Socialization: Theory and Research* 328-51 (J.E. Grusec & P.D. Hastings eds., 2007).

Many studies have shown that adjustment is largely affected by differences in the quality of parenting and parent-child relationships, the quality of the relationships between the parents, and the richness of the economic and social resources available to the family Dimensions of family structure – including such factors as divorce, single parenthood, and the parents’ sexual orientation – and biological relatedness between parents and children are of little or no predictive importance once the process variables are taken into account, because the same factors explain child adjustment regardless of family structure.³⁰

In short, children whose parents provide loving guidance in the context of secure home environments are likely to show more positive adjustment, regardless of their parents’ sexual orientation.³¹

Research also shows that the quality of relationships among significant adults in a child’s life is associated with adjustment. When parental relationships are characterized by love, warmth, cooperation, security, and mutual support, children are more likely to show positive adjustment. In contrast, when parental relationships are conflict-ridden and acrimonious, adjustment is likely to be less favorable. Family instability, household disruption, and parental divorce are often associated with poorer adjustment and problems that can last into adulthood.³²

³⁰ M.E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children’s Adjustment*, 16 *Applied Developmental Sci.* 98-111 (2012).

³¹ Lamb & Lewis, *supra* note 29; Patterson & Hastings, *supra* note 29.

³² See, e.g., P.R. Amato, *Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) Meta-Analysis*, 15 *J. Fam. Psychol.* 355 (2001).

These correlations are just as true for children reared by same-sex couples as for children reared by heterosexual couples.³³

Research with children reared by heterosexual parents indicates that they do better with two parenting figures than with one.³⁴ This finding, however, has not been tested directly by comparing children reared by a same-sex couple versus those raised by a single lesbian, gay, or bisexual parent.

Finally, researchers acknowledge the association between child adjustment and access to economic and other resources. Children with access to sufficient economic resources are likely to live in safer neighborhoods, breathe cleaner air, and eat more nutritious food. They are also more likely to have opportunities to participate in positive after-school activities, and have social and emotional resources from teammates, coaches, youth leaders, and others. Children with

³³ *The Family Context of Parenting in Children's Adaptation to Elementary School* (P.A. Cowan, C.P. Cowan, J.C. Ablow, V.K. Johnson & J.R. Measelle eds., 2005); R.W. Chan, B. Raboy & C.J. Patterson, *Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998); E.M. Cummings, M.C. Goeke-Morey & L.M. Papp, *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 *Child Dev.* 1918 (2003); E.M. Cummings, M.C. Goeke-Morey & L.M. Papp, *Everyday Marital Conflict and Child Aggression*, 32 *J. Abnormal Child Psychol.* 191 (2004); Golombok, *supra* note 29; D. Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 *J. Marriage & Fam.* 556 (2012); M.J. Rosenfeld, *Nontraditional Families & Childhood Progress Through School*, 47 *Demography*, 755 (2010).

³⁴ See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

access to these resources are more likely to show positive adjustment, regardless of their parents' sexual orientation.³⁵

In short, the very same factors that are linked to positive development of children with heterosexual parents are linked to positive development of children with gay and lesbian parents.³⁶

C. There Is No Scientific Basis for Concluding That Same-Sex Couples Are Any Less Fit or Capable Parents Than Heterosexual Couples, or That Their Children Are Any Less Psychologically Healthy and Well Adjusted.

Assertions that heterosexual couples are better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children of heterosexual parents, are not supported by the cumulative scientific research.³⁷

³⁵ *Neighborhood Poverty: Context and Consequences for Children* (J. Brooks-Gunn, G.J. Duncan & J.L. Aber eds., 1997); *Consequences of Growing Up Poor* (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson & Hastings, *supra* note 29; Potter, 2012, *supra* note 33; Rosenfeld, 2010, *supra* note 33.

³⁶ See R.W. Chan, *supra* note 33; C.J. Patterson, *Lesbian and Gay Parents and Their Children: A Social Science Perspective*, in *Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, Nebraska Symposium on Motivation 141 (D.A. Hope ed., 2009); J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159 (2001); C.J. Telingator & C.J. Patterson, *Children and Adolescents of Lesbian and Gay Parents*, 47 *J. Am. Acad. of Child & Adolescent Psychiatry* 1364 (2008); J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 *Child Dev.* 1886 (2009).

³⁷ The research on gay, lesbian, and bisexual parents includes dozens of empirical studies. Their findings are summarized in reviews of empirical literature published in respected, peer-reviewed journals and academic books. Recent reviews include T.J. Biblarz & J. Stacey, *How does the gender of parents matter?*, 72 *J. Marriage & Fam.* 3-22 (2010); A.E. Goldberg, *Lesbian and Gay Parents and Their*

Rather, the vast majority of scientific studies that have directly compared these groups have shown that gay and lesbian parents are as fit and capable as heterosexual parents, and that their children are as psychologically healthy and well adjusted. More research has focused on lesbian mothers than on gay fathers,³⁸ but the published studies that have included gay fathers also find that they are as fit and able parents as heterosexual fathers.³⁹

Children: Research on the Family Life Cycle (2010); C.J. Patterson, *Family Lives of Lesbian and Gay Adults*, in *The Handbook of Marriage and Family* 668-71 (G.W. Peterson & K.R. Bush eds. 2013); C.J. Patterson, *Children of Lesbian and Gay Parents*, *Psychology, Law, and Policy*, 64 *Am. Psychologist* 727 (2009). For earlier reviews, see, e.g., Stacey & Biblarz, *supra* note 36; E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents: A Review of Studies from 1978 to 2000*, 43 *Scand. J. Psychol.* 335 (2002).

³⁸ See, e.g., H. Bos & T.G.M. Sandfort, *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 62 *Sex Roles* 114 (2010); R.H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 *Applied Developmental Sci.* 164, 176 (2010); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *Developmental Psychol.* 20 (2003); I. Rivers, et al., *Victimization, Social Support, and Psychosocial Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, 44 *Developmental Psychol.* 127 (2008); J.L. Wainright & C.J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 *J. Fam. Psychology* 526 (2006).

³⁹ Farr, *supra* note 38, at 176; see also S. Erich et al., *Gay and Lesbian Adoptive Families: An Exploratory Study of Family Functioning, Adoptive Child's Behavior, and Familial Support Networks*, 9 *J. Fam. Soc. Work* 17 (2005); S. Erich, et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 *J. GLBT Fam. Stud.* 43 (2005). For a

A 2001 comprehensive survey of peer-reviewed scientific studies concluded that the evidence from empirical research “shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children’s mental health or social adjustment.”⁴⁰ These conclusions are bolstered by three recent studies using national probability samples. One used data from the National Longitudinal Study of Adolescent Health to compare adolescents parented by female couples with adolescents parented by heterosexual couples. The researchers found no differences between the two groups on measures of a large number of key variables, including psychosocial adjustment, school

review of earlier research, see C.J. Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004).

⁴⁰ Stacey & Biblarz, *supra* note 36, at 176; see also Report of National Academy of Sciences’ Institute of Medicine 234 (2011) (concluding that “studies show that [the children of lesbian and gay parents] are well adjusted and developmentally similar to the children of different-sex parents”).

Several studies that have focused on small reported differences have identified positive effects on children of same-sex couples. Biblarz & Stacey, *supra* note 36 (noting the “ubiquitous findings of no differences,” but concluding that any small differences are positive for families of same-sex couples at least as often as for families of heterosexual couples); E.L. Sutfin et al. *How Lesbian and Heterosexual Parents Convey Attitudes About Gender to Their Children: The Role of Gendered Environments*, 58 *Sex Roles* 501-13 (2008) (finding children of lesbian mothers were more tolerant of other children engaging in behaviors that violate traditional gender norms); Bos, H., Gartrell, N., Roeleveld, J., & Ledoux, G., *Civic Competence of Dutch Children in Female Same-Sex Parent Families: A Comparison with Children of Opposite-Sex Parents*, Youth & Society (2013) (finding, based on data from a Netherlands national probability sample, that Dutch children in two-mother households scored significantly higher than comparable children with heterosexual parents on measures of attitudes concerning acting democratically, dealing with conflicts, and dealing with differences).

outcomes, substance use, delinquency, victimization experiences, and relationships with peers.⁴¹

Another study used data from the Early Childhood Longitudinal Study – Kindergarten cohort to compare the academic achievement of children growing up in various family structures. When the effects of significant family transitions (*e.g.*, parental divorce, separation, or death) were taken into account, children in same-sex family structures showed slightly higher achievement levels than children living with their biological mother and father (although this difference was not statistically significant).⁴²

The third study used Census data to compare educational outcomes among children residing in homes with various family structures. When differences in household income and parental educational levels were statistically controlled, the differences in school progress between children of married heterosexual couples and same-sex cohabiting couples were not statistically significant. As the study's author concluded, "[t]he analysis in this article, the first to use large-sample

⁴¹ J.L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 *Developmental Psychol.* 117 (2008); Wainright & Patterson, *supra* note 38; J.L. Wainright et al., *supra* note 36.

⁴² D. Potter, *supra* note 33. Data about parents' sexual orientation were not collected in the study. Consequently, parental sexual orientation and relationship were inferred from a series of questions about the household composition and caretakers.

nationally representative data, shows that children raised by same-sex couples have no fundamental deficits in making normal progress through school.”⁴³

Studies also show that children with gay or lesbian parents do not differ from the children of heterosexual parents in their gender identity (their psychological sense of being male or female).⁴⁴ Similarly, although some studies have found that children of lesbian mothers⁴⁵ or children raised in same-sex parent families⁴⁶ were less gender-stereotyped or more flexible in their patterns of gender-role behaviors (*e.g.*, during play⁴⁷) than those of children in heterosexual parent families, most published studies have found no reliable differences between the children of lesbian and heterosexual mothers in *social gender role* conformity

⁴³ M.J. Rosenfeld, *supra* note 33.

⁴⁴ See *e.g.*, Bos & Sandfort, *supra* note 38. For literature reviews, see Patterson (2013), *supra* note 37; Goldberg, *supra* note 37; Perrin & Committee, *supra* note 37, at 342.

⁴⁵ R. Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 Archives of Sexual Behavior 167-184 (1986). An earlier paper (M. Hotvedt & J.B. Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (W. Paul et al. eds., 1982)) reported data from the same study.

⁴⁶ A.E. Goldberg et al., *Gender-Typed Play Behavior in Early Childhood: Adopted Children with Lesbian, Gay, and Heterosexual Parents*, 67 Sex Roles 503-515 (2012); R.H. Farr, *supra* note 38; E. Sutfin, et al., *supra* note 40; M. Fulcher et al., *Individual Differences in Gender Development: Associations with Parental Sexual Orientation, Attitudes, and Division of Labor*, 58 Sex Roles 330 (2008).

⁴⁷ A.E. Goldberg et al., *supra* note 46; R. Green et al., *supra* note 45. An earlier paper (Hotvedt & Mandel, *supra* note 45) reported data from the same study.

(adherence to cultural norms defining feminine and masculine behavior).⁴⁸ A recent study also found that *adoptive* children of gay, lesbian and heterosexual parents alike showed typical gender role development.⁴⁹

The available evidence also suggests that parental sexual orientation has no effect on child sexual orientation:⁵⁰ The vast majority of gay and lesbian adults were raised by heterosexual parents, and the vast majority of children raised by gay and lesbian parents grow up to be heterosexual.⁵¹

Amici emphasize that the parenting abilities of gay men and lesbians and the positive outcomes for their children are *not* areas where credible scientific researchers disagree.⁵² Thus, after careful scrutiny of decades of research, the

⁴⁸ R.H. Farr et al., *supra* note 38. For reviews of the literature, see C.J. Patterson (2013), *supra* note 37; Goldberg, *supra* note 37.

⁴⁹ See R.H. Farr et al., *supra* note 38.

⁵⁰ Golombok, *supra* note 29; S. Golombok & F. Tasker, *Do Parents Influence the Sexual Orientation of Their Children? Findings from a Longitudinal Study of Lesbian Families*, 32 *Developmental Psychol.* 3 (1996).

⁵¹ C.J. Patterson (2013), *supra* note 37, at 659-681.

⁵² One unreplicated 1996 Australian study purports to show deficits in lesbian and gay parents and their children. See S. Sarantakos, *Children in Three Contexts: Family, Education, and Social Development*, 21 *Child. Australia* 23 (1996). But the anomalous results are likely the result of multiple methodological problems, especially confounding the effects of parental sexual orientation with the effects of parental divorce, which is known to correlate with poor adjustment and academic performance. See, e.g., P.R. Amato, *supra* note 32. Some commentators have cited publications by Paul Cameron, but his work has been repeatedly discredited for bias and inaccuracy. See G.M. Herek, *Bad Science in the Service of Stigma: A Critique of the Cameron Group's Survey Studies*, in *Stigma and Sexual Orientation: Understanding Prejudice Against Lesbians, Gay Men, and Bisexuals*

APA concluded in 2004 that (a) “there is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children” and (b) that “research has shown that the adjustment, development, and psychological well-being of children are unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish.”⁵³

The National Association of Social Workers has similarly determined that “[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies.”⁵⁴ The American Psychoanalytic Association has determined that “[t]here is no credible evidence that shows that a parent’s sexual orientation or gender identity will

223 (G.M. Herek ed., 1998); *Baker v. Wade*, 106 F.R.D. 526, 536 (N.D. Tex. 1985) (ruling that Cameron made “misrepresentations” to the court).

⁵³ Am. Psychol. Ass’n, *Resolution on Sexual Orientation, Parents, and Children* (2004), available at <http://www.apa.org/about/governance/council/policy/parenting.pdf>.

⁵⁴ Nat’l Ass’n of Soc. Workers, Policy Statement: *Lesbian, Gay, and Bisexual Issues*, in *Social Work Speaks* 193, 194 (4th ed. 1997); see also Nat’l Ass’n of Soc. Workers, Policy Statement: *Family Planning and Reproductive Choice*, in *Social Work Speaks* 129, 132 (9th ed. 2012).

adversely affect the development of the child.”⁵⁵ In adopting an official Position Statement in support of legal recognition of same-sex civil marriage, the American Psychiatric Association observed that “no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within heterosexual relationships.”⁵⁶ Finally, the American Medical Association has adopted a policy supporting legislative and other reforms to allow adoption by same sex partners.⁵⁷

V. Denying the Status of Marriage to Same-Sex Couples Stigmatizes Them.

The foregoing shows that the beliefs about gay men and lesbians advanced in support of the Hawaii and Nevada laws are contradicted by the scientific evidence and reflect an unreasoned antipathy towards an identifiable minority. In depriving gay men and lesbians of membership in an important social institution, these laws convey the states’ judgments that committed intimate relationships between people of the same sex are inferior to heterosexual relationships. This is the essence of stigma.

⁵⁵ Am. Psychoanalytic Ass’n, Position Statement: *Parenting* (2012), available at http://www.apsa.org/about_apsaa/position_statements/parenting.aspx.

⁵⁶ Am. Psychiatric Ass’n, Position Statement: *Support of Legal Recognition of Same-Sex Civil Marriage*(2005), available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200502.aspx>.

⁵⁷ See Am. Med. Ass’n, Policy H-60.940, *Partner Co-Adoption*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page>.

A stigmatized condition or status is negatively valued by society, defines a person's social identity, and thus disadvantages that person.⁵⁸ A classic work in this area characterized stigma as “an undesired differentness.”⁵⁹ Stigma can be manifested in social institutions, like the law, and in individual behaviors. Laws that accord majority and minority groups differing status highlight the perceived “differentness” of the minority and thereby tend to legitimize prejudicial attitudes and individual acts against the disfavored group, including ostracism, harassment, discrimination, and violence. Large numbers of lesbian, gay, and bisexual people experience such acts of prejudice because of their sexual orientation.⁶⁰

⁵⁸ See E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963); B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 Ann. Rev. Soc. 363 (2001); J. Crocker et al., *Social Stigma*, in 2 The Handbook of Social Psychology 504 (D.T. Gilbert et al. eds., 4th ed. 1998); Am. Med. Ass'n, Policy H-65.973, *Health Care Disparities in Same-Sex Partner Households*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page> (recognizing that “exclusion from civil marriage contributes to health care disparities affecting same-sex households.”).

⁵⁹ Goffman, *supra* note 58, at 5.

⁶⁰ A national survey of a representative sample of gay, lesbian, and bisexual adults found that 21% had been the target of a physical assault or property crime since age 18 because of their sexual orientation; among gay men, 38% had been the target of such a crime. Eighteen percent of gay men and 16% of lesbians reported they had experienced discrimination in housing or employment. G.M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample*, 24 J. Interpersonal Violence 54 (2009); see also G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945, 948 (1999); M.V.L. Badgett, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* (2001).

Hawaii and Nevada's laws banning recognition of same-sex marriages are instances of institutional stigma. They convey the states' judgment that, in the realm of intimate relationships, legally united same-sex couples are inherently less deserving of society's full recognition than heterosexual couples. By devaluing and delegitimizing the relationships that constitute the very core of homosexual orientation, the Nevada and Hawaii laws compound and perpetuate the stigma historically attached to homosexuality.

CONCLUSION

The judgments below should be reversed.

Respectfully submitted,

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